

## **COOPERATIVE AGREEMENT**

This COOPERATIVE AGREEMENT (the “Agreement”) is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 (“Google”), and The Rector and Visitors of the University of Virginia, a state-supported institution of higher education and agency of the Commonwealth of Virginia located in Charlottesville, Virginia (“University”), and is effective as of the date of the last signature below (the “Effective Date”). Google and the University are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties”.

### **RECITALS**

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Google will digitize works from the University collection to include them in Google’s services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

### **DEFINITIONS**

1.     **DEFINITIONS**. Capitalized terms will have the meanings set forth below:

1.1     “Available Content” means the University print collection as identified by Google and the University. Without limiting the foregoing, “Available Content” also includes University Digital Content.

1.2     “Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3     “Digitize” means to convert content from a tangible, analog form into a digital electronic representation of that content. “Digitization”, “Digitizing” and “Digitized” shall have corresponding meanings.

1.4     “End User” means a person that accesses or uses the Google Services.

1.5     “Google Digital Copy” means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.6     “Google Services” means Google’s products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and

otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites.

1.7     “Google Site” means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.8     “Hosted Solution” shall have the meaning set forth in Section 4.6.

1.9     “Initial Term” shall have the meaning set forth in Section 8.1.

1.10    “University Digital Copy” shall have the meaning set forth in Section 4.7.

1.11    “University Digital Content” means content that the University of Virginia Library has in its possession in digitized form that the Library is authorized, as determined by the Library in its sole discretion to share with Google.

1.12    “University of Virginia Library” means the comprehensive libraries of The University of Virginia not including Law, Darden or Health Sciences unless the Parties expressly agree to include such libraries by a written addendum to this Agreement.

1.13    “Project” means a project for digitizing certain Selected Content.

1.14    “Project Plan” means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.

1.15    “Renewal Term” shall have the meaning set forth in Section 8.1.

1.16    “Selected Content” means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.17    “Term” shall have the meaning set forth in Section 8.1.

## TERMS

### **2.     DIGITIZATION OPERATIONS.**

2.1     Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that the University has agreed to commit all circulating volumes from the University of Virginia Library system to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.2 Collecting the Selected Content. University shall be responsible for locating, pulling and moving the Selected Content to a designated location at the University facility as well as re-shelving the Selected Content when the Digitization is complete. Upon commencement of a Project, University shall perform any conservation efforts that the Parties determine are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing.

2.3 Transporting and Storing the Selected Content. Google will remove the Selected Content from University premises to perform Digitization in facilities controlled by Google. University agrees that the Selected Content may be transported to one or more Digitization facilities determined by Google. Google will provide the University with the address of and a reasonable opportunity to inspect all Digitization facilities subject to Google's reasonable approval and University's compliance with all of Google's policies and procedures applicable to visits to Digitization facilities. Google will provide and be responsible for commercially reasonable transport methods and temporary storage areas. All risk of loss, damage or destruction of materials will lie with Google from the time that Google accepts possession of the materials until such time as they are returned to the University on University premises; provided that University agrees that Google's obligation will not exceed \$5,000 for any given text and that Google's maximum liability for any damage or loss to Selected Content in Google's custody resulting from a single incident or event will not exceed five million dollars (\$5,000,000). Google will carry reasonable sufficient insurance with a reputable independent provider approved by the University insuring against the risk of loss, damage, or destruction of materials entrusted to Google's custody, and will provide, at the University's request, a certificate of insurance to the University naming the University as an additional insured. In general, Google will provide a transport method and temporary storage area that is reasonably clean, dry, cool, free from insects and other pests, protected from fire, and secure against theft and vandalism. However, unless the University makes Google aware that specific materials require non-standard care, transport, and processing and Google decides to go forward with digitization of such items, Google shall have no responsibility to undertake special efforts to address unique or fragile conditions in its transport or handling of individual items. University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from University premises and will provide Google with an itemized list of any such materials.

2.4 Digitizing the Selected Content. Google will be responsible for Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Plan, if any.

2.5 Return of the Selected Content. Google shall return the Selected Content to the designated location where Google obtained it in the like manner in which it was collected after Google completes Digitizing the Selected Content.

### **3. COSTS**

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to pulling and moving the Selected Content to a designated location at the University facility as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy (d) any conservation efforts that University elects to undertake on the Selected Content prior to Digitizing, and (e) any barcoding and associated data entry to barcode the Selected Content deemed appropriate by the University; provided University understands that Google will not bear the cost of barcoding and that only works that are barcoded may be included as Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to digitize the Selected Content, (c) space required to digitize the Selected Content (to the extent not provided by University), (d) transportation of Selected Content from the University facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by University), and (e) those costs that Google elects to incur to address any legal and copyright issues associated with Google's Digitization of in-copyright materials.

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. Any such budget, which is mutually approved and authorized in writing, will take precedence over the provisions of Sections 3.1 and 3.2 above.

#### **4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES**

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request Google not to Digitize any Available Content or to cease the display or use of any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. Neither University nor Google shall have any ownership or license rights to the Available Content that is Digitized (i.e., to the materials underlying the digitization process), except where University already owns such rights. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, as part of the Google Services. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has appropriate legal authority to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute fair use under copyright law and (2) bibliographic (e.g., title, author, date, etc) and other non-copyrighted information. In the event that Google has received a license or other permission from the applicable copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol)

to restrict automated access to any portion of the Google Digital Copy that is in-copyright. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Solution. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and its patrons, researchers and staff via a website that will be hosted by Google (the "**Hosted Solution**"). The design, layout, content, functions and features of the Hosted Solution will be determined by Google.

4.7 University Digital Copy. Google shall provide the University with access to download one copy of the University Digital Copy in a timeframe mutually agreed by the parties. Unless otherwise agreed by the parties in writing, the "**University Digital Copy**" means a copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files including (i) bibliographic information consisting of title and author of each Digitized work and (ii) which image files correspond to that Digitized work, and (c) the logical order of those image files. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the parties. In addition Google will provide the University with the ability to sample the files for one hundred (100) Digitized works per quarter to assess quality. Google agrees that the quality of files provided to University in the University Digital Copy will be substantially similar to the quality of files provided to any other library with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute from the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy. For avoidance of doubt, Google agrees to include in the University Digital Copy a Digitized version of any work that was provided by University to Google as Selected Content hereunder, so long as such Selected Content is in the Public Domain and has been Digitized by Google either under this Agreement or from sources other than University.

4.8 Ownership and use of University Digital Copy. Neither University nor Google shall have any ownership or license rights to the Available Content that is Digitized through this Agreement (i.e., to the materials underlying the Digitization process), except where University already has such rights. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy on University Website. University shall have the right to use the University Digital Copy, in whole or in part at University's sole discretion, subject to copyright law, as part of services offered on University's website and internally for research, scholarly and academic purposes. University may not charge, receive payment or other consideration for the University Digital Copy in connection with University's website. University agrees that to the extent it makes any portion of the University Digital Copy publicly available, that it will identify the works, in a statement on a web page or other access point to be mutually agreed to by the Parties, as "Digitized by Google" or in a substantially similar manner. University shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available. University shall also implement reasonable policies and procedures designed to prevent third parties from (a) downloading or otherwise obtaining any portion of the University Digital Copy for commercial purposes, (b) redistributing any portions of the University Digital Copy other than portions of or discrete individual texts from the University Digital Copy that have been used for scholarly or research purposes and will be disseminated in compliance with copyright law and as part of a scholarly project, website, or publication, or (c)

automated and systematic downloading from its website image files from the University Digital Copy. University shall develop methods and systems for ensuring that substantial portions of the University Digital Copy are not downloaded from the services offered on University's website or otherwise disseminated to the public at large. University shall also implement security and handling procedures for the University Digital Copy. The University will provide Google with a copy of its procedures and will comply with any reasonable revision or addition recommended by Google.

4.10 Distribution of the University Digital Copy. University shall have the right to provide all or any portion of public domain works contained in the University Digital Copy (a) to a library member of the Digital Library Federation or (b) with Google's consent, to a library member of VIVA (The Virtual Library of Virginia) (such consent not to be unreasonably withheld so long as the member library can evidence its compliance with the restrictions contained herein) (each recipient library is referred to herein as a "**Recipient Library**") for non-commercial research, scholarly or academic purposes by the Recipient Library and the faculty, students, scholars and staff authorized by the Recipient Library to access their commercially licensed electronic information products; provided that each Recipient Library is subject to a written agreement that (1) prohibits the Recipient Library from redistributing any portion of the University Digital Copy without first obtaining the prior written consent of Google, (2) makes Google an express third party beneficiary of such agreement, (3) provides an indemnity to Google for such Recipient Library's use of the Selected Content subject to the applicable law of the state or other jurisdiction for Recipient Libraries that are members of VIVA, (4) contains obligations and limitations at least as restrictive as the restrictions on University set forth in Section 4.9, and (5) requires each Recipient Library, to the extent it makes any portion of the University Digital Copy publicly available, to identify the works, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner. University shall notify Google of each Recipient Library with which it makes an agreement described in this Section. Except as expressly allowed herein, University will not share, provide, license, or sell the University Digital Copy to any third party.

## **5. ACCESS, AUTHORIZATION AND SUPPORT**

5.1 Access. Google shall have the right to reasonably access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that Google notify University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact; in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue. No changes to the Project Plan or costs' allocation may be made without written authorization from the University Librarian.

5.3 Support. University shall appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular University business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by University. University shall also appoint one person to serve as the technical contact for Google for obtaining and regulating the use of the University Digital Copy. This technical contact shall be available during regular University business hours at a telephone number and e-mail address to be provided by University. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.

## **6. CONFIDENTIALITY**

6.1 Confidentiality. Disclosure of confidential and/or proprietary information disclosed hereunder, including the existence and content of the Agreement and any information provided pursuant to the Agreement, shall be governed by the confidentiality provisions of the Google Mutual Non-Disclosure Agreement ("NDA"), which is attached hereto as Exhibit A and incorporated by reference to this Agreement.

6.2 PR. Neither Party will issue any public announcement regarding the existence or content of this Agreement without prior written approval of the other Party. Notwithstanding the foregoing, Google may include University's Brand Features with prior written approval of the University Librarian in presentations, marketing materials, and customer lists so long as Google first furnishes the University with specific examples of such presentations, marketing materials, and customer lists and uses the University's Brand Features only in a manner that is essentially similar to such prior reviewed and approved uses.

## **7. BRAND FEATURES**

7.1 Ownership. Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 License to University Brand Features. Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized in writing for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

## **8. TERM AND TERMINATION**

8.1 Term. This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years unless earlier terminated as provided herein (the "**Initial Term**"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "**Renewal Term**") unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The "**Term**" of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Termination. Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof. In addition, Google may immediately suspend or terminate this Agreement if Google reasonably

determines that it is commercially impractical to continue performing its obligations in light of applicable laws.

8.3 Effect of Expiration or Termination. Within thirty (30) days after expiration or termination of this Agreement for any reason and subject to applicable law, each Party shall return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 4 (excluding Section 4.6), 6, 8, 9, 10, 11 and 12.

## **9. WARRANTIES AND DISCLAIMER**

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GOOGLE AND THE UNIVERSITY SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

## **10. DEFENSE AND LEGAL RESPONSIBILITIES.**

10.1 Google shall defend , or at its option, settle any third party lawsuit or proceeding brought against the University (or its Board of Visitors, employees' or agents') based on an allegation that Google's actions under this Agreement violate that party's copyrights or other legal rights. The foregoing indemnification and defense includes any third party claims alleging that (a) the University's participation in this Agreement and release of Selected Content to Google for Digitization constitutes a violation of that third party's copyrights and (b) Google's use or distribution of the Google Digital Copy constitutes a violation of that third party's copyrights, but excludes any third party claim that relates to University's use or distribution of the University Digital Copy. Mixed claims that include claims that relate to University's use or distribution of the University Digital Copy and claims covered by this Section shall not vitiate this indemnification responsibility by Google on breach-of-contract grounds. Consistent with the requirements of Virginia law, Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Google shall pay any damage awards or settlement costs that may be incurred solely in connection with such third party claims. University may participate in the defense with counsel of its own choice, at its own expense. Consistent with and subject to the requirements of Virginia law, settlement of any claim against the University shall be subject to approval of the University, which approval will not unreasonably be withheld, and to approval by the Governor of Virginia and Attorney General of Virginia where required by state law, which approval the University shall diligently seek.

10.2 Consistent with and subject to the requirements of Virginia law, University shall defend, or at its option, settle any third party lawsuit brought against Google (its affiliates, employees or agents) or proceeding that relates to University's use or distribution of the University Digital Copy in violation of that party's copyrights or other legal rights, including without limitation, any such use by a third party. The University shall have the sole responsibility for defense of such actions and for payment of any attorney's fees, damage awards or settlement costs that may be incurred solely as a result of the University's use or distribution of its own Digital Copy. University agrees that Google may participate in the defense with counsel of its own choice, at its own expense. The foregoing shall not be interpreted as a waiver of the sovereign immunity of the Commonwealth of Virginia, nor assumption by the University of any liability or obligation for the acts or omissions of Google or for the acts or omissions of others contrary to state law governing the University as an agency of the Commonwealth of Virginia.

10.3 **General.** Responsibilities under Sections 10.1 and 10.2 shall be limited to (a) payment by the responsible party of all damages and costs finally awarded for such claim, or (b) settlement costs approved in writing by the responsible party. The foregoing obligations shall exist only if the party seeking indemnification ("requesting party"): (i) promptly notifies the responsible party of such claim, (ii) provides the responsible party with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (iii) gives the responsible party full control and sole authority over the defense and settlement of such claim subject to applicable law. The requesting party may join in defense with counsel of its choice at its own expense. The responsible party shall only reimburse the requesting party for expenses incurred by the requesting party with the responsible party's prior written approval.

## **11. LIMITATION OF LIABILITY**

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTIONS 2.3, 6 (CONFIDENTIALITY) OR PAYMENT OBLIGATIONS UNDER SECTION 10: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE; AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO TEN THOUSAND DOLLARS (\$10,000). THE PARTIES AGREE THAT: (I) THE MUTUAL AGREEMENTS MADE IN THIS SECTION 11 REFLECT A REASONABLE ALLOCATION OF RISK, AND (II) THAT EACH PARTY WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY.

## **12. GENERAL PROVISIONS**

12.1 **No Obligation.** Notwithstanding the foregoing, Google shall have no obligation to digitize any portion of the Available Content or to use any portion of the Google Digital Copy as part of the Google Services. However, Google's decision to cease Digitization activities under this Agreement and thus fail to provide the University with a University Digital Copy shall not be taken without prior consultation with the University enabling the University to minimize investments in staff required under Section 5.3 of this Agreement. Likewise, notwithstanding anything in this Agreement to the contrary, University shall not be obligated to participate in the Digitization program described in this Agreement with respect to any or all of the Available Content. However, University's decision not to participate in the Digitization program shall not be made without prior consultation with Google enabling Google to minimize investments in operations required to perform the Digitization. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 **Assignment.** Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld.

12.3 **Continuity.** This Agreement shall be binding upon the successors and permitted assigns of both parties.

12.4 **Notices.** Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be sent (a) if to University to the attention of the University Librarian at the address identified above and (b) if to Google to such address as provided at [www.google.com/corporate/address.html](http://www.google.com/corporate/address.html) or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, "Attn: Legal Dept." Notice shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent

simultaneously via first class mail. Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts.

12.5 Independent Contractors. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

12.6 Force Majeure. Neither Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

12.7 Enforceability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties.

12.8 Non-Waiver in Event of Breach. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches.

12.9 Limitation of Rights. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns.

12.10 Headings. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

12.11 Completeness/Amendment. This Agreement sets forth the entire understanding and agreement between the parties and may be amended only in a writing signed by both parties.

12.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

***[Rest of page left intentionally blank.]***

IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the “**Effective Date**”, which shall be the date written by Google below.

**Google**

By: \_\_\_\_\_

Print Name:

Title:

Date:

**University:**

By: \_\_\_\_\_

Print Name:

Title:

Date:

*[Signature Page to Cooperative Agreement]*

**EXHIBIT A**  
**NON-DISCLOSURE AGREEMENT**  
**(attached)**